

## ABOUT THE WEEKLY SUMMARY

The Weekly Summary of NLRB cases, as the name implies, is a publication that summarizes each week all published NLRB decisions in unfair labor practice and representation election cases, except for summary judgment cases. It also lists all decisions of NLRB administrative law judges and direction of elections by NLRB regional directors. Links are established from the weekly summary index to the summaries and from the summaries to the full text of the decisions.



[Index of Back Issues Online](#)

February 4, 2000

W-2724

**CASES SUMMARIZED**

SUMMARIES CONTAIN LINKS TO FULL TEXT

[Rockwell Automation/Dodge](#), Rogersville, TN  
[Sea Crest Construction Corp. and Peter Scalamandre & Sons, Inc.](#), Freeport, NY  
[Tasty Baking Co.](#), Philadelphia, PA  
[Tucci Milan](#), Chicago, IL

**OTHER CONTENTS**

[List of Decisions of Administrative Law Judges](#)

[List of No Answer to Complaint Cases](#)

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*6 West Limited Corp., and its Partner, Lettuce Entertain You Enterprises, Inc., d/b/a Tucci Milan* (13-CA-32908, et al.; 330 NLRB No. 77) Chicago, IL Jan. 24, 2000. Members Fox and Liebman affirmed the administrative law judge's findings that: (1) the Respondent violated Section 8(a)(3) and (1) of the Act by suspending and discharging union activist Brian Gibson, allegedly for his conduct in connection with the disappearance of certain "manager's logs," and discharging Gretchen Grant Innis, Jill Ricci, and Greg Calvird pursuant to the discriminatory application of a no-solicitation rule; and (2) violated Section 8(a)(1) by falsely telling employees that Hotel Employees and Restaurant Employees Local 1 had threatened to blow up a house shared by Gibson and Ricci and that employees were in imminent danger of union violence. [\[HTML\]](#) [\[PDF\]](#)

They also found, however, that the Respondent committed additional violations of Section 8(a)(1) by increasing the use of security guards during the union campaign and by soliciting grievances. The judge's recommended Order and notice to employees were modified to include the violations found and the appropriate redress therefor.

Member Hurtgen, dissenting in part, would reverse the judge's finding that the Respondent violated Section 8(a)(3) and (1) by suspending and discharging Brian Gibson. He assumed *arguendo* that the judge correctly found that a *prima facie* case was established, but he concluded that the Respondent successfully rebutted it. Member Hurtgen, contrary to his colleagues, agreed with the judge that the Respondent did not violate Section 8(a)(1) by increasing security or by soliciting grievances.

(Members Fox, Liebman, and Hurtgen participated.)

Charges filed by Brian Gibson, Jill Ricci, Gretchen Grant, and Joseph Carmolli, individuals; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Chicago, Oct. 30-Nov. 1 and Dec. 17-18, 1996. Adm. Law Judge Thomas R. Wilks issued his decision Nov. 5, 1997.

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*Rockwell Automation/Dodge (Formerly Reliance Electric)* (10-CA-29818; 330 NLRB No. 82) Rogersville, TN Jan. 26, 2000. The Board reversed the administrative law judge and dismissed the complaint alleging that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Gregory Silvers on October 16, 1996 because of his activities for the Machinists International. [\[HTML\]](#) [\[PDF\]](#)

Members Fox and Liebman found it unnecessary to decide whether the facts cited by the judge support his conclusion that Silvers' union activity was a motivating factor in his discharge because, even assuming *arguendo* that the General Counsel has met his burden, they found that the Respondent met its Wright Line burden of establishing that it would have discharged Silver even in the absence of his protected activity. Contrary to the judge, they found that the evidence shows that the Respondent reasonably believed that Silvers falsified company records. Moreover, uncontroverted evidence shows that the Respondent previously had discharged two employees who like Silvers falsified records and had received prior disciplinary actions, Members Fox and Liebman added. They disagreed with the judge's conclusion that the Respondent's asserted reasons for discharging Silvers were pretextual.

Member Brame, concurring in the result, found that the Respondent's discharge of Silver did not violate the Act because the General Counsel failed to establish a *prima facie* case of union discrimination and therefore, unlike his colleagues, he did not consider whether the judge correctly concluded that the Respondent would have discharged Silvers in the absence of his protected union activity.

(Members Fox, Liebman, and Brame participated.)

Charge filed by the Machinists International; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Rogersville, Feb. 12-13, 1998. Adm. Law Judge Howard I. Grossman issued his decision Nov. 3, 1998.

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*Tasty Baking Co.* (4-CA-24152, et al.; 330 NLRB No. 80) Philadelphia, PA Jan. 31, 2000. Members Fox and Liebman agreed with the administrative law judge that the Respondent violated Section 8(a)(3) and (1) of the Act by issuing written warnings to Michael Flannery and Robert Nolan, suspending Nolan, and transferring Supervisor Edwina Flannery to the night shift because of her husband's union activity. Further, they affirmed the judge's findings that the Respondent violated Section 8(a)(1) by demoting E. Flannery to a nonsupervisory position, threatening employee Martin with unspecified reprisals if he should engage in union activity, telling M. Flannery that it was imposing a new get tough policy in response to his union activities and that he was issued a warning for such activities, and threatening M. Flannery with discharge because of his union activities and for calling OSHA. [\[HTML\]](#) [\[PDF\]](#)

Member Hurtgen, dissenting in part, disagreed with two of his colleagues' findings. He found that Supervisor Kenny, in

speaking to employee Martin, did not violate Section 8(a)(1) because it has not been firmly established that Kenny suggested reprisals for union activity and that the Respondent's demotion of E. Flannery did not violate the Act because the complaint allegation regarding her demotion is time barred by Section 10(b).

(Members Fox, Liebman, and Hurtgen participated.)

Charges filed by Teamsters Local 115; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Philadelphia between Feb. 26 and March 5, 1997. Adm. Law Judge George Aleman issued his decision June 15, 1998.

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*Sea Crest Construction Corp. and Peter Scalamandre & Sons, Inc., Joint Employers* (2-CA-31219; 330 NLRB No. 83) Freeport, NY Jan. 31, 2000. The Board, agreeing with the administrative law judge that the Respondents have not sustained their burden of showing that Charging Party Ian Henry directed a profane statement at a supervisor, held that the Respondents violated Section 8(a)(3) and (1) of the Act by discharging shop steward Henry because of his protected activities for Carpenters Local 157 and complaints to the Respondent and an OSHA representative about the inadequacy of respiratory protection for carpenters. [\[HTML\]](#) [\[PDF\]](#)

(Members Fox, Liebman, and Brame participated.)

Charge filed by Ian Henry, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New York, Dec. 12-13, 1998 and Feb. 17, 1999. Adm. Law Judge D. Barry Morris issued his decision June 2, 1999.

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#### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Washington County Mental Health Services, Inc.* (State, County and Municipal Employees Council 93) Montpelier, VT January 24, 2000. 1-CA-36460; JD-9-00, Judge Wallace H. Nations.

*United Parcel Service, Inc.* (an Individual) Detroit, MI January 26, 2000. 7-CA-41784; JD-8-00, Judge Bruce D. Rosenstein.

*International Shipping Company and Union De Trabajadores De Muelles Local 1740* (Individuals) Isis Grande, San Juan, PR January 26, 2000. 24-CA-8159, 24-CB-1949, and 1950; JD(ATL)-06-00, Judge William N. Cates.

*Argenbright Security, Inc.* (Service Employees Local 1877) Los Angeles, CA January 27, 2000. 31-CA-23668, et al.; JD-11-00, Judge James L. Rose.

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#### NO ANSWER TO COMPLAINT

*(In the following case, the Board granted the General Counsel's motion for summary judgment based on the respondent's failure to answer the complaint.)*

*Auto Workers Local 235 (UAW) (American Axle)* (7-CB-12150; 330 NLRB No. 84) Detroit, MI January 31, 2000.